

REVISTA DE DIREITO INTERNACIONAL
BRAZILIAN JOURNAL OF INTERNATIONAL LAW

Human rights due diligence and access to remedy: a comparative analysis of twenty-six due diligence laws and proposals

Devida diligência em direitos humanos e acesso à reparação: uma análise comparativa de vinte e seis leis e propostas de devida diligência

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VOLUME 22 • N. 1 • 2025
INTERDISCIPLINARY APPROACHES TO BUSINESS &
HUMAN RIGHTS: AN ASSESSMENT OF THE FIELD 10+
YEARS FROM THE UNGPs

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Human rights due diligence and access to remedy: a comparative analysis of twenty-six due diligence laws and proposals*

Devida diligência em direitos humanos e acesso à reparação: uma análise comparativa de vinte e seis leis e propostas de devida diligência

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Abstract

The rise of global value chains and increased outsourcing of production activities to different parts of the world have highlighted the need to better address human rights violations and provide victims of corporate human rights violations with an access to remedy. With the introduction of human rights due diligence legislations, a new approach is taken to confront human rights violations by companies. Several studies have focused on the emergence, scope and reach of due diligence legislations. Little research has been done on what they provide in terms of access to remedy. Providing a comprehensive overview of the rising legal application of due diligence concept, the first part of the paper looks at the transformation of due diligence measures into legally binding mechanisms and its links to access to remedy, while the second part of the paper outlines the operational aspects of remedial action and introduces the process of examination of remedial provisions through comparative case analysis of 26 effective and in-force legislations, as well as proposals and initiatives at different stages of development. By identifying whether the remedy is introduced in a form of “restitution”, “compensation”, or “satisfaction”, either singly or in combination, the third part of the paper points out the severity, comprehensiveness or leniency of the remedial and sanctioning measures, which is then followed by a discussion on if the envisioned measures could potentially provide an effective remedy to the victims of human rights violations. The paper shows that there is significant variation between the different due diligence legislations in terms of access to remedy.

Keywords: due diligence; human rights; access to remedy; remediation; sanctions; EU trade policy.

Resumo

O surgimento das cadeias globais de valor e o aumento da terceirização das atividades produtivas para diferentes partes do mundo evidenciaram a necessidade de enfrentar melhor as violações de direitos humanos e de oferecer às víti-

* Recebido em 18/09/2024
Aprovado em 25/10/2024

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mas dessas violações corporativas o acesso à reparação. Com a introdução de legislações sobre devida diligência em direitos humanos, adota-se uma nova abordagem para lidar com as violações cometidas por empresas. Diversos estudos se concentraram no surgimento, escopo e alcance dessas legislações. Poucas pesquisas, no entanto, analisaram o que essas leis oferecem em termos de acesso à reparação. Ao fornecer uma visão abrangente da crescente aplicação jurídica do conceito de devida diligência, a primeira parte do artigo analisa a transformação das medidas de diligência em mecanismos legalmente vinculantes e suas conexões com o acesso à reparação. A segunda parte do artigo descreve os aspectos operacionais das ações reparatórias e apresenta o processo de exame das disposições sobre reparação por meio de uma análise comparativa de 26 legislações vigentes e em vigor, além de propostas e iniciativas em diferentes estágios de desenvolvimento. Ao identificar se a reparação é introduzida sob a forma de “restituição”, “indenização” ou “satisfação”, isoladamente ou em combinação, a terceira parte do artigo aponta a gravidade, abrangência ou flexibilidade das medidas reparatórias e sancionatórias, seguida de uma discussão sobre se as medidas previstas podem potencialmente oferecer uma reparação eficaz às vítimas de violações de direitos humanos. O artigo demonstra que há uma variação significativa entre as diferentes legislações de devida diligência no que diz respeito ao acesso à reparação.

Palavras-chave: devida diligência; direitos humanos; acesso à reparação; remediação; sanções; política comercial da UE

1 Introduction

The involvement of transnational corporations in human rights violations have been well-documented^{1, 2, 3, 4}.

¹ ENNEKING, L.; GIESEN, I.; SHAAP, A.-J.; RYNGAERT, C.; KRISTEN, F.; ROORDA, L. *Accountability, international business operations and the law*: providing justice for corporate human rights violations in global value chains. London: Routledge, 2020.

² MARX, A.; BRIGHT, C.; PINEAU, N.; WOUTERS, J. Corporate accountability mechanisms in EU member states for human rights abuses in third countries. In: CZECH, P.; HESCHL, K.; LUKAS, K.; NOWAK, M.; OBERLEITNER, G. (ed.). *European Yearbook on Human Rights*. [S. l.]: Intersentia, 2019. p. 157-186.

³ MEERAN, R.; MEERAN, J. *Human Rights litigation against multinationals in practice*. Oxford: Oxford University Press, 2021.

⁴ WETTSTEIN, F. *Business and human rights: ethical, legal and managerial perspectives*. Cambridge: Cambridge University Press, 2022.

This involvement can take several forms⁵ including cases where companies are directly responsible for human rights abuses and cases where companies are sourcing products that are produced in violations of human rights by suppliers with whom they operate in the context of global value chains. In order to address these violations and provide victims access to remedy several initiatives have been taking. Initially, several soft “soft law” instruments like the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence Guidance for Responsible Business Conduct were introduced. As defined by the OECD, due diligence allows companies to identify and address actual or potential risks through an on-going, proactive and reactive, multi-step process in order to mitigate or prevent adverse impacts associated with their activities or corporate decisions⁶. Both soft law instruments introduce the concept of due diligence in order to prevent human rights abuses from occurring and addressing adverse effects of human rights abuses. The soft law instruments, although they have contributed to raising awareness, have been criticized for their inability to prevent human rights abuses and provide victims access to remedy^{7, 8, 9}, which would entail ensuring that victims can receive appropriate ‘compensation’ for their suffered harm, guaranteed through the access to justice via judicial, administrative or other bodies for human rights violations¹⁰. While these soft law instruments do

⁵ MARX, A.; BRIGHT, C.; PINEAU, N.; WOUTERS, J. Corporate accountability mechanisms in EU member states for human rights abuses in third countries. In: CZECH, P.; HESCHL, K.; LUKAS, K.; NOWAK, M.; OBERLEITNER, G. (ed.). *European Yearbook on Human Rights*. [S. l.]: Intersentia, 2019. p. 157-186.

⁶ OECD. *OECD guidelines for multinational enterprises on responsible business conduct*. Paris: OECD Publishing, 2023.

⁷ MACCHI, C.; BRIGHT, C. Hardening soft law: the implementation of human rights due diligence requirements in domestic legislation. In: BUSCEMI, M.; LAZZERINI, N.; MAGI, L. (ed.). *Legal sources in business and human rights: evolving dynamics in international and european law*. Leiden: Brill Nijhoff, 2020. p. 218-247.

⁸ OTTEBURN, K. Reaching the limit: access to remedy through nonjudicial mechanisms for victims of business-related human rights abuses. *International Journal of Human Rights*, v. 28, n. 2, p. 220-244, 2024.

⁹ OTTEBURN, K.; MARX, A. Seeking remedy for corporate human rights abuses: what is the contribution of the OECD national contact points? In: MARX, A.; VAN CALSTER, G.; WOUTERS, J. (ed.). *Research handbook on global governance, business and human rights*. Cheltenham: Edward Elgar Publishing, 2022. p. 229-253.

¹⁰ BUYSE, A. Lost and regained? Restitution as a remedy for human rights violations in the context of international law. *Heidelberg Journal of International Law (Zeitschrift für ausländisches öffentliches Recht und Völkerrecht)*, v. 68, n. 2008, p. 129-153, 2008.

play an important role in promoting more corporate transparency and raising awareness on responsibilities and expectations placed upon businesses for human rights protection, they do not have much ability to impose legal accountability required to generate, not only procedural, but also operational and substantial human rights compliance¹¹. As a result, initiatives have been taking to transform these soft law commitments into hard law via different types of due diligence based regulatory measures^{12,13}. Examples include Dutch Child Labour Due Diligence Act¹⁴, French Duty of Vigilance Law¹⁵ and the European Union Directive on Corporate Sustainable Development Due Diligence¹⁶. The judicialization of corporate responsibility does not leave it up to the business operators to voluntarily ensure the protection of human rights, but instead introduces a legal duty to comply, as well as sanction non-compliance and provide measures to remediate already occurred violations. This shift towards mandatory due diligence blurs the distinction between private and public regulation¹⁷ and constitutes according to Duval¹⁸ a double movement of the privatization of transnational human rights governance through the empowerment of corporations as legitimate governance actors as well as the publicization of corporate governance through transparency requirements and accountability processes which allow for access to remedy to victims of human rights abuses.

Research is emerging on the origin of these regulatory measures^{19,20}, their design^{21,22} and potential flaws in their design^{23,24,25,26,27,28}. While the existing research provides an insight on the primary motivation and preceding conditions that led to the conception of due diligence in a form of various operational models, no research so far has looked into what these regulatory measures provide in terms of access to remedy for victims of human rights violations. What potential outcome or benefits can the legalisation of due diligence entail for victim of human rights violations and which remedial measures can these victims receive? This paper seeks to identify (1) whether due diligence measures include provisions on remediation and (2) how these provisions vary and differ between remediation measures. The analysis is based on a comparison of 26 legislative documents of adopted or proposed due diligence measures. By doing so, the paper intends to assess to what extent remediation measures are included in currently adopted or proposed due diligence initiatives, what type(s) of remediation mechanism legislators most frequently resort to and if these remediation measures can potentially provide an effective remedy to the victims

¹¹ NOLAN, J. Hardening soft law: are the emerging corporate social disclosure and due diligence laws capable of generating substantive compliance with human rights norms? *Revista de Direito Internacional*, v. 15, n. 2, p. 64-83, 2018.

¹² BRIGHT, C.; MARX, A.; PINEAU, N.; WOUTERS, J. Toward a corporate duty for lead companies to respect human rights in their global value chains? *Business and Politics*, v. 22, n. 4, p. 667-697, 2020.

¹³ GRABS, J.; FATIMAH, Z. *2023 database of disclosure, due diligence, and trade-based supply chain legislation of potential*. Barcelona: Universitat Ramon Llull; ESADE Business School, 2023.

¹⁴ INDIA COMMITTEE OF THE NETHERLANDS. *Child Labour Due Diligence Act (Wet zorgplicht kinderarbeid)*. 2019. Available at: <https://respect.international/child-labour-due-diligence-law-wet-zorgplicht-kinderarbeid/>.

¹⁵ FRANCE. National Assembly. *LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*. Paris, 2017.

¹⁶ EUROPEAN COMMISSION. *Proposal for a Directive of the European Parliament and of The Council on corporate sustainability due diligence and amending directive (EU) 2019/1937, COM/2022/71 final*. Brussels, 15 Mar. 2024.

¹⁷ MENDE, J. Corporate human rights responsibilities: rethinking the public-private divide. *Nordic Journal of Human Rights*, v. 41, n. 3, p. 255-264, 2023.

¹⁸ DUVAL, A. Ruggie's double movement: assembling the private and the public through human rights due diligence. *Nordic Journal of Human Rights*, v. 41, n. 3, p. 279-303, 2023.

¹⁹ KRAJEWSKI, M. Mandatory human rights due diligence laws: blurring the lines between state duty to protect and corporate responsibility to respect? *Nordic Journal of Human Rights*, v. 41, n. 3, p. 265-278, 2023.

²⁰ LENNARTZ, B. Business actors' interest in harder and softer regulation of human rights due diligence. *Nordic Journal of Human Rights*, v. 41, n. 3, p. 326-344, 2023.

²¹ BRIGHT, C.; MARX, A.; PINEAU, N.; WOUTERS, J. Toward a corporate duty for lead companies to respect human rights in their global value chains? *Business and Politics*, v. 22, n. 4, p. 667-697, 2020.

²² DEVA, S. Mandatory human rights due diligence laws in Europe: a mirage for rightsholders. *Leiden Journal of International Law*, v. 36, n. 2, p. 389-414, 2023.

²³ DEHM, J. Beyond climate due diligence: fossil fuels, 'red lines' and reparations. *Business and Human Rights*, v. 8, n. 2, p. 151-179, 2023.

²⁴ DEVA, S. Mandatory human rights due diligence laws in Europe: a mirage for rightsholders. *Leiden Journal of International Law*, v. 36, n. 2, p. 389-414, 2023.

²⁵ HARRISON, J. *Human rights due diligence: challenges of method, power and competition*. Coventry: University of Warwick, 2023. (CHRIp Working Paper series, n. 2).

²⁶ NOLAN, J. Chasing the next shiny thing: can human rights due diligence effectively address labour exploitation in global fashion supply chains? *International Journal for Crime, Justice and Social Democracy*, v. 11, n. 2, p. 1-14, 2022.

²⁷ SCHILLING-VACAFLOR, A.; LENSCHOW, A. Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges. *Regulation and Governance*, v. 17, n. 3, p. 677-693, 2023.

²⁸ SMIT, L.; BRIGHT, C.; NEELY, S. Muddying the waters: the concept of a 'safe harbour' in understanding human rights due diligence. *Business and Human Rights*, v. 8, n. 1, p. 1-17, 2023.

of human rights violations. As the transition of due diligence instruments from “soft law” to “hard law” is a relatively young process, it may be too early to conclusively establish whether this movement can actually provide the intended protection and support to the victims of human rights violations. While the effects on the status quo should be observed over a long term period, through the research covered in the paper, we hope to demonstrate that legally guaranteed effective remedy to the victim is still a process in development, a notion supported by the widening spectrum of remedial and sanctioning measures in adopted and proposed due diligence legislations.

The first part of the paper provides an overview on the growing relevance of the concept of due diligence, the resulting transition of “soft law” due diligence instruments into the “hard law” obligations and its link to access to remedy. The second part introduces the analytic framework and operationalization of access remedy which is applied in this study. It also provides details on the case selection and identifies 26 due diligence legislations that are effective and in-force, as well as proposals and initiatives at different stages of development. The paper looks at the provisions of the select due diligence legislations and categorises remediation mechanisms, considering whether they are used in a form of “restitution”, “compensation”, or “satisfaction”, either singly or in combination, or whether they do not contain any provisions on access to remedy. The third part of the paper provides an in-depth analysis of the spectrum of remedies and sanctions in current legislations, pointing to their severity, comprehensiveness or leniency. This section is followed by a discussion on the effectiveness of the types of remediation mechanisms and their weaknesses, also in relation to the sanctioning provisions they include. Finally, conclusions are drawn on what type of remediation approaches are most frequently supported by legislators and whether they can prove to be effective for combatting human rights violations in business activities.

2 Due diligence and human rights

The rise of global value chains allow companies to outsource production activities to different parts of the world in search of efficiency gains and competitive

advantage^{29, 30}. While global value chains can be a source of foreign investment, economic growth, new job opportunities and import of skills and technology, they also represent an important challenge when it comes to human and environmental rights protection. Several studies have documented human and environmental rights violations in global value chains^{31, 32, 33}. Moreover, the presence of multiple production locations in different countries within a singular value chain introduces multiple regulatory frameworks and jurisdictions for companies to operate in. The regulatory stringency concerning human, labour and environmental standards varies between countries as well as their efforts to enforce these standards. As a result, a governance gap emerges, permitting companies to outsource their services to countries with low environmental and human rights standards³⁴.

In order to answer the demand for companies to take accountability for the human rights violations in their value chains, as well as to address the regulatory governance gap, companies have increasingly adopted self-regulatory, voluntary due diligence measures, while the international organisations have developed a range of soft-law measures based on the concept of due diligence³⁵. The UN Guiding Principles on Business and Human Rights (UNGPs) puts the responsibility to safeguard human rights and fundamental freedoms on all States and all business enterprises, regardless of their size, sector, location, ownership and structure. Principle 17 further elaborates on the necessity of business

²⁹ DALLAS, M. P.; PONTE, S.; STURGEON, T. J. Power in global value chains. *Review of International Political Economy*, v. 26, n. 4, p. 666-694, 2019.

³⁰ GEREFFI, G.; HUMPHREY, J.; STURGEON, T. The governance of global value chains. *Review of International Political Economy*, v. 12, n. 1, p. 78-104, 2005.

³¹ KHOURY, S.; WHYTE, D. *Corporate human rights violations: global prospects for legal action*. London: Routledge, 2017.

³² MARX, A.; BRIGHT, C.; PINEAU, N.; WOUTERS, J. Corporate accountability mechanisms in EU member states for human rights abuses in third countries. In: CZECH, P.; HESCHL, K.; LUKAS, K.; NOWAK, M.; OBERLEITNER, G. (ed.). *European Yearbook on Human Rights*. [S. l.]: Intersentia, 2019. p. 157-186.

³³ WETTSTEIN, F. *Business and human rights: ethical, legal and managerial perspectives*. Cambridge: Cambridge University Press, 2022.

³⁴ KOWALSKI, P.; LOPEZ GONZALEZ, J.; RAGOUSISI, A.; UGARTE, C. *Participation of developing countries in global value chains: implications for trade and trade-related policies*. Paris: OECD Publishing, 2015. (OECD Trade Policy Papers, n. 179).

³⁵ LANDAU, I. *Human rights due diligence and labour governance*. Oxford: Oxford University Press, 2023.

enterprises to put in place policies and processes in order to “identify, prevent, mitigate and account” for the impact their business operations have on human rights. The OECD Guidelines for Responsible Business Conduct provide a more elaborate outline of diligence process steps, consisting of six distinct but interrelated elements: (1) embedding responsible business conduct into policies and management systems; (2) identification and assessment of adverse impacts in operations, supply chains and business relationships; (3) cessation, prevention or mitigation of adverse impact; (4) tracking implementation and results; (5) communicating how impacts are addressed; and (6) providing for or cooperating in remediation when appropriate. The end goal of these steps is that businesses and corporations organise their activities and operations in a manner that takes corporate responsibility and due diligence measures into consideration, safeguarding, at minimum, the basic human rights.

This voluntary approach towards dealing with human rights violations by companies is considered to insufficiently address human rights violations of companies. As a result, in the last decade several legislative measures emerged which transform the voluntary soft law guidelines into mandatory hard law requirements for companies^{36, 37, 38}. This push towards hardening of soft law practices reflects the diminishing support for the dichotomy between the responsibilities of states versus companies in the protection of human rights³⁹. Companies increasingly need to address potential adverse human rights effects. This is now operationalized in a number of legislative measures, mainly in the European Union and its Member States.

Following the launch of these new measures, researchers have started paying attention to these due diligence measures. Some researchers analyzed and compared

due diligence regulatory measures from an institutional design perspective focusing on the substantive reach of the laws (narrowly focusing on one issue or more broadly on several human rights and environmental issues including climate change), on the reach of companies (only large companies versus all companies) and on the enforcement mechanisms in place (penalties, civil liabilities)⁴⁰. Focusing on climate change, Dehm⁴¹ critically assessed the current approaches to due diligence on substantive grounds highlighting the conceptual ambiguity in due diligence legislations on what constitutes a substantive commitment to address climate change for companies. Deva⁴² developed a framework and ideal-type due diligence law based on design parameters related to substantive and procedural commitments to environmental and human rights protection. He benchmarked five due diligence laws and showed that these laws fall short on many components, questioning the overall effectiveness of the current design of due diligence measures and voicing the concern that due diligence practices can just become a ‘tick-the-box’ exercise for businesses⁴³. Schilling-Vacaflor and Lenschow⁴⁴ focus on the French Duty of Vigilance Law and zoom in on the accountability mechanisms put in place which would enable affected communities and stakeholders to hold companies to account in case of non-compliance with due diligence regulations. This is one of the first studies delving into issues of access to remedy and shows several weaknesses in the French approach. Some authors argue that one of the reasons for the identified weaknesses of current due diligence approaches lies in the fact that due diligence from a theoretical perspective is an abstract concept that allows for a large variety of interpretative possibilities to coexist and hence there is no real standard or set of rules on how exactly the states should

³⁶ BRIGHT, C.; MARX, A.; PINEAU, N.; WOUTERS, J. Toward a corporate duty for lead companies to respect human rights in their global value chains? *Business and Politics*, v. 22, n. 4, p. 667-697, 2020.

³⁷ LENNARTZ, B. Business actors’ interest in harder and softer regulation of human rights due diligence. *Nordic Journal of Human Rights*, v. 41, n. 3, p. 326-344, 2023.

³⁸ SCHILLING-VACAFLOR, A.; LENSCHOW, A. Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges. *Regulation and Governance*, v. 17, n. 3, p. 677-693, 2023.

³⁹ KRAJEWSKI, M. Mandatory human rights due diligence laws: blurring the lines between state duty to protect and corporate responsibility to respect? *Nordic Journal of Human Rights*, v. 41, n. 3, p. 265-278, 2023.

⁴⁰ BRIGHT, C.; MARX, A.; PINEAU, N.; WOUTERS, J. Toward a corporate duty for lead companies to respect human rights in their global value chains? *Business and Politics*, v. 22, n. 4, p. 667-697, 2020.

⁴¹ DEHM, J. Beyond climate due diligence: fossil fuels, ‘red lines’ and reparations. *Business and Human Rights*, v. 8, n. 2, p. 151-179, 2023.

⁴² DEVA, S. Mandatory human rights due diligence laws in Europe: a mirage for rightsholders. *Leiden Journal of International Law*, v. 36, n. 2, p. 389-414, 2023.

⁴³ DEVA, S. Mandatory human rights due diligence laws in Europe: a mirage for rightsholders. *Leiden Journal of International Law*, v. 36, n. 2, p. 389-414, 2023.

⁴⁴ SCHILLING-VACAFLOR, A.; LENSCHOW, A. Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges. *Regulation and Governance*, v. 17, n. 3, p. 677-693, 2023.

develop their legislations and establish obligations⁴⁵. It is becoming more prevalent that the requirements for corporate transparency and due diligence promoted by the existing soft law instruments need to be supported by accountability, mandated via compliance mechanisms, so the corporate efforts are not boiled down to a cosmetic form of human rights protection^{46, 47}.

To delve deeper into the issue of access to remedy and remediation this paper performs an analysis of 26 legislative documents with regard to the type and comprehensiveness of remediation mechanisms envisioned in recent due diligence legislations worldwide. In the next section we focus on the operationalization of access to remedy and the case selection.

3 Access to remedy in due diligence: importance and operationalization

Access to remedy constitutes the third pillar of the UNGPs and a cornerstone of any approach which aims to address human rights violations by companies⁴⁸. The concept of remediation refers to access to justice via judicial, administrative or other bodies for human rights violations and a proper ‘compensation’ for the harm done⁴⁹. While due diligence strives to identify, prevent and mitigate potential impacts on human rights, remediation seeks to bring these adverse impacts to an end and possibly enable restoration into a previous state. OECD Guidelines envision remediation to be carried out through a variety of practical actions proportionate to the significance and scale of the adverse impacts.

These actions can include: restoration of the affected person or persons to the state prior to the occurrence of the adverse impact; remedy or a combination of remedies, such as apologies, restitution or rehabilitation, financial or non-financial compensation, punitive sanctions and preventative measures of reoccurrence, as dictated by an existing law or international guidelines; consultations with the impacted rights holders and their representatives to determine appropriate remedies. Access to remedy is also one of the foundational pillars included in the UNGPs, which places the responsibility on the States by making it their duty to “take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy”.

While the need for those whose rights were violated to have access to an effective remedy is recognised, what does having this “right” actually entail and what constitutes an “effective remedy”? A report published by the UN Working Group clarifies that this “right” consists of procedural and substantive elements, imposing duties both on states and non-state actors, including businesses. The victim’s ability to exercise their right to an effective remedy is dependent on two factors: a) the existence of a remedial mechanism that can provide effective remedies and b) provision of access to such mechanism. Consequently, the two duty bearers, states and non-state actors play a part in the realisation of the “right”: States need to establish effective remedial mechanisms that can deliver effective remedies, whereas business enterprises need to provide remediation that is effective both in process and outcome for the adverse impacts that its activities have caused or contributed to⁵⁰. However, as violations are different in context, significance, scale and severity, there is still significant ambiguity and leeway in deciding what kind of remedies can be provided as effective means of restitution and reparation. Despite there being two main avenues for leading remediation mechanisms, state led judicial avenues and company based non-judicial grievance mechanisms, both can have shortcomings, with governments limiting and restricting judicial avenues for claims and companies delaying their investigations,

⁴⁵ BAADE, B. Due diligence and the duty to protect human rights. In: KRIEGER, H.; PETERS, A.; KREUZER, L. *Due diligence in the international legal order*. Oxford: Oxford University Press, 2020. p. 92-108.

⁴⁶ NOLAN, J. Hardening soft law: are the emerging corporate social disclosure and due diligence laws capable of generating substantive compliance with human rights norms? *Revista de Direito Internacional*, v. 15, n. 2, p. 64-83, 2018.

⁴⁷ QUJIANO, G.; LOPEZ, C. Rise of Mandatory human rights due diligence: a beacon of hope or a double-edged sword? *Business and Human Rights*, v. 6, n. 2, p. 241-256, 2021.

⁴⁸ CHICHESTER, O.; RIQUELME, M. Access to Remedy. *Business for Social Responsibility*, San Francisco, 2021. Available at: <https://www.bsr.org/reports/bsr-access-to-remedy.pdf>. Access on: 31 July 2024.

⁴⁹ BUYSE, A. Lost and regained? Restitution as a remedy for human rights Violations in the context of international law. *Heidelberg Journal of International Law (Zeitschrift für ausländisches öffentliches Recht und Völkerrecht)*, v. 68, n. 2008, p. 129-153, 2008.

⁵⁰ OHCHR. *A/72/162: report on access to effective remedy for business-related human rights abuses*. UN Working Group on the issue of human rights and transnational corporations and other business enterprises. Geneva, 2017.

having poor community consultations and disregarding power imbalances^{51, 52, 53}. Ultimately, both state-led judicial and company-led non-judicial mechanisms end up being inadequate in ensuring that the victims of human rights abuses are provided with an effective remedy⁵⁴. Additionally, countries that adhere to the OECD Guidelines are required to set up National Contact Points (NCPs) to not only promote the guidelines and answer related inquiries, but to also serve as a state-led non-judicial grievance mechanism by making recommendations and facilitating agreements between the involved parties via non-adversarial methods such as mediation. However, while NCPs have been able to facilitate remediation in number of cases in the form of monetary compensation, in-kind reparation, company policy changes etc., the NCP is not authorized to legally order any remedy measure⁵⁵.

The ambiguous and broad nature of due diligence and remediation concepts allows states to produce legislations where remediation processes and measures are filtered and interpreted in different logics and approaches, at times emphasising human and labour rights and the principles of transparency, participation, and accountability, or emphasising corporate risk management and control of international corporate systems⁵⁶. Additionally, as suggested in the UN Working Group's report, it is most effective to take an "all roads to remedy" approach in order to produce operational and actual remedies for cases that occur in diverse settings⁵⁷.

⁵¹ BRIGHT, C.; MARX, A.; PINEAU, N.; WOUTERS, J. Toward a corporate duty for lead companies to respect human rights in their global value chains? *Business and Politics*, v. 22, n. 4, p. 667-697, 2020.

⁵² MARX, A.; BRIGHT, C.; PINEAU, N.; WOUTERS, J. Corporate accountability mechanisms in EU member states for human rights abuses in third countries. In: CZECH, P.; HESCHL, K.; LUKAS, K.; NOWAK, M.; OBERLEITNER, G. (ed.). *European Yearbook on Human Rights*. [S. l.]: Intersentia, 2019. p. 157-186.

⁵³ OTTEBURN, K. Reaching the limit: access to remedy through nonjudicial mechanisms for victims of business-related human rights abuses. *International Journal of Human Rights*, v. 28, n. 2, p. 220-244, 2024.

⁵⁴ MCGRATH, S. Fulfilling the forgotten pillar: ensuring access to remedy for business and human rights abuses. *Institute for Human Rights and Business*, Eastbourne, 15 Dec. 2015. Available at: <https://www.ihrb.org/latest/fulfilling-the-forgotten-pillar-ensuring-access-to-remedy-for-business-and>. Access on: 21 July 2024.

⁵⁵ HOW do NCPs handle cases? *OECD*, [2024]. Available at: <https://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>. Access on: 18 May 2024.

⁵⁶ LANDAU, I. *Human rights due diligence and labour governance*. Oxford: Oxford University Press, 2023.

⁵⁷ OHCHR. *A/72/162: report on access to effective remedy for business-related human rights abuses*. UN Working Group on the

To analyze different approaches towards remediation we conduct a comparative case analysis including 26 legislative initiatives. The selection of relevant due diligence measures to analyze was done in two steps. First, more than 30 proposed or adopted regulatory measures which include a due diligence obligation were identified (starting from the inventory developed by Grabs & Fatimah⁵⁸ and expanded with information from other sources). Next, due diligence measures were selected which require direct action to deal with human rights risks. Some of the due diligence-based measures solely focus on information disclosure and do not directly oblige a company to take action (and hence do not include remediation provisions). Based on this two-step selection process, twenty-six due diligence measures were identified.

For each of the selected ten due diligence measures, a screening was done on whether they include provisions on access to remedy. For the purpose of this paper, we conceptualize remedies according to the forms of reparation provided in Article 34 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts⁵⁹ published by the International Law Commission, which categorises remedies to take form of "restitution", "compensation", or "satisfaction". Article 35 defines "Restitution" as the obligation to "to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: (a) is not materially impossible; (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation". "Compensation" constitutes a second type of reparation (Article 36), paid both in cash or kind, coming into play when the wrongful act cannot be remedied through restitution and should "cover any financially assessable damage including loss of profits insofar as it is established". The third category of remediation, "satisfaction" (Article 37) covers additional reparatory measures employed when the injury caused by that act

issue of human rights and transnational corporations and other business enterprises. Geneva, 2017.

⁵⁸ GRABS, J.; FATIMAH, Z. *2023 database of disclosure, due diligence, and trade-based supply chain legislation of potential*. Barcelona: Universitat Ramon Llull; ESADE Business School, 2023.

⁵⁹ INTERNATIONAL LAW COMMISSION. *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10), chp.IV.E.1*. New York, 2001. Available at: <https://www.refworld.org/legal/otherinstr/ilc/2001/en/20951>. Access on: 31 July 2024.

“cannot be made good by restitution or compensation.” In this case, a larger variety in remedial approach can be observed, as the action can be in a form of an expression of regret, a formal apology, assurance of non-repetition etc. In sum, we categorize the different measures according to 4 remediation mechanisms categories. First, restitution which includes restoration of victim(s) to original state such as return of lands, rehabilitation etc. Second, compensation which can take the form of financial compensation. Third, satisfaction which includes a broad group of remedies such as verification of facts, apologies, promises to not do it again etc. Fourth, an unspecified category which refers to legislative documents which refer to remediation but do not specify it and leave it open to courts to determine or in the case of the EU, by the Member States.

The paper looks at specific provisions in selected due diligence legislations in order to analyse how the legislations use remediation mechanisms, whether they take the form of “restitution”, “compensation”, or “satisfaction”, either singly or in combination. Each time we found provisions on remediation we categorized them according to the three categories allowing for multiple coding (i.e. provisions being linked to 2 or more categories). In some cases, there were separate provisions on remediation. In some cases, they were included under provisions which deal with sanctioning non-compliance with the due diligence requirements.

As a result of the analysis, a matrix (see Table 1) is created, indicating the legislative status of the document, as well as marking the above-mentioned categories under which the remedies provided in the document fall. Additionally, the table includes a separate category “unspecified” for the type of legislations that may envision a remedial action, however do not elaborate on what form or shape this action could take, thus, not providing enough information to be classified into “restitution”, “compensation”, or “satisfaction” categories. Finally, for the purpose of also highlighting legislations that are lacking in mandating remedial support for the victims due to the absence of any remediation mechanism, the category “none” is included in the table.

Table 1 - Overview of Remediation Mechanism in Twenty-Six Due Diligence Measures

Legislation	Country	Legal Status	Remediation Mechanism				
			Restitution	Compensation	Satisfaction	Unspecified	None
Corporate Duty of Vigilance Law	France	Enforced		X			
Transparency Act	Norway	Enforced	X	X	X		
Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO)	Switzerland	Enforced					X
Child Labour Due Diligence Act (Wet zorgplicht kinderarbeid)	The Netherlands	Enforced					X
The Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichten-gesetz)	Germany	Enforced			X		
Environment Act 2021	The UK	Enforced	X		X		
Motion for a Resolution on a Supply Chain Act	Austria	Motion Submitted				X	
Proposal on Duty of Vigilance	Belgium	Proposed	X		X		
Modern Slavery Act	The UK	Enforced		X	X		
The Bill on Responsible and Sustainable International Business Conduct (RSIBC bill)	The Netherlands	Proposed		X	X		
Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937	The EU	Adopted	X	X	X		
Slave-Free Business Certification Act of 2022	The USA	Proposed		X	X		

Legislation	Country	Legal Status	Remediation Mechanism				
			Restitution	Compensation	Satisfaction	Unspecified	None
General Law of Corporate Responsibility and Corporate Due Diligence	Mexico	Proposed	X	X			
Law For The Protection Of Human Rights, Sustainability And Due Diligence In Transnational Business Activities	Spain	Proposed		X	X		
Framework for Business and Human Rights (PL572/2022)	Brazil	Proposed	X	X			
Fighting Against Forced Labour and Child Labour in Supply Chains Act (Amendment of Customs Tariff)	Canada	Adopted		X			
Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2022	Australia	Proposed					X
Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act	The USA	Proposed					X
Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010	The EU	Enforced				X	
The Uyghur Forced Labor Prevention Act (Public Law No. 117-78) (UFLPA)	The USA	Enforced			X		

Legislation	Country	Legal Status	Remediation Mechanism				
			Restitution	Compensation	Satisfaction	Unspecified	None
Forced Labour Regulation	Mexico	Enforced					X
Xinjiang Manufactured Goods Importation Prohibition Act	Canada	Proposed					X
Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market	The EU	Proposed		X	X		
MTIPS/MMIRDH Interministerial Ordinance No. 4 OF 05/11/2016	Brazil	Enforced					X
Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains	China	Voluntary Compliance					X
Customs Amendment (Preventing Child Labour) Bill 2023	Australia	Enforced					X

4 Analysing the spectrum of remedies in current legislations

In this section we discuss the main differences and similarities between the different legislative documents with regard to remediation. While different occurrences of human rights violations may call for different, proportional remedies restitution clearly stands on top in the hierarchy of modes of remediation. It is the primary mechanism to “make good” on violations, as measures covered under compensation and satisfaction mechanisms only come into play when restitution is not possible or insufficient. However, in real life application, the use of restitution, especially as the exclusive remediation mechanism is rather rare. Practical disadvantages, such as the passage of time make restitution to a prior state difficult or impossible. As a result, the use of compensation as a remediation mechanism is often more

convenient, flexible and quick⁶⁰. This tendency is also reflected in the legislative documents analysed in the paper. Restitution is not envisioned as a singular remediation mechanism in any of the legislative documents. Instead, the majority of the mapped legislations resort to the provision of remedial relief through combining different remediation categories or only mandating remedial action belonging solely to either compensation or satisfaction categories.

There are only six legislative initiatives that include duties or obligations to provide for or cooperate in remediation with remedies that could fall into the restitution category – Norway’s Transparency Act⁶¹, the EU Directive on Corporate Sustainability Due Diligence (CSDDD)⁶², the UK Environmental Act 2021⁶³, Mexico’s General Law of Corporate Responsibility and Corporate Due Diligence⁶⁴, Belgium’s Proposal on Duty of Vigilance⁶⁵, and Brazil’s Framework for Business and Human Rights (PL 572/2022)⁶⁶. However, it should also be noted that all of the above mentioned legislative documents further include either compensation or satisfaction category, or both as other avenues for providing remedies. There are only two legislations to offer remedial action on a wide range that includes restitution, compensation and satisfaction. The first one is the Norway’s Transparency Act, which came into force on 1 July 2022. The Act aims to “promote enterprises’ respect for fundamental human rights and decent

working conditions in connection with the production of goods and the provision of services” by placing an obligation of conducting due diligence of suppliers and other business partners on larger enterprises that are resident in Norway and offer goods and services in or outside Norway, as well as larger enterprises that operate on the Norwegian market and are subject to taxation according to the Norwegian legislation. When it comes to remedies and remediation mechanisms, Section 4 (f) of the Act requires companies to “provide for or co-operate in remediation and compensation where this is required”, as well as to provide the Consumer Authority, an independent administrative body responsible for supervising and enforcing the Act, with “a written confirmation that the illegal conduct will cease” (Section 9).

The second legislation with all-encompassing remedial action is the EU Directive on Corporate Sustainability Due Diligence (CSDDD)^{67, 68}, where remediation avenues are more developed and extensive. CSDDD, applying to major EU and non-EU enterprises operating in the EU market, introduces an obligation to implement sustainability due diligence commitments throughout the company’s business own operations as well as in their supply chain. The Directive defines remediation as “restitution of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would be in had the actual adverse impact not occurred” (Article 3). The burden of providing proportionate remediation falls on the infringing company and remedies can include financial or non-financial compensation the affected person or persons, as well as reimbursement of the costs incurred by public authorities for any necessary remedial measures. In addition to the violating company-provided remedies falling in the “restitution” and “compensation” categories, the Directive also introduces voluntary remediation which can be provided by the company in case the adverse impact is brought upon by a business partner (Article 8c (2)).

The combination of restitution and compensation as remediation mechanism is observed in only two le-

⁶⁰ BUYSE, A. Lost and regained? Restitution as a remedy for human rights Violations in the context of international law. *Heidelberg Journal of International Law (Zeitschrift für ausländisches öffentliches Recht und Völkerrecht)*, v. 68, n. 2008, p. 129-153, 2008.

⁶¹ NORWAY. Parliament. *Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions (Transparency Act)*. Oslo, 2021.

⁶² EUROPEAN COMMISSION. *Proposal for a Directive of the European Parliament and of The Council on corporate sustainability due diligence and amending directive (EU) 2019/1937, COM/2022/71 final*. Brussels, 15 Mar. 2024.

⁶³ UNITED KINGDOM. Parliament. *Environment Act 2021 (c. 30)*. Norwich: The Stationery Office Limited, 2021.

⁶⁴ MEXICO. Senate. *Proposal for the General Law of Corporate Responsibility and Corporate Due Diligence*. Mexico City, 2020.

⁶⁵ BELGIUM. Chamber of Representatives. *Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur/Wetsvoorstel houdende de instelling van een zorg- en verantwoordingsplicht voor de ondernemingen, over hun hele waardeketen heen n° 55-1903/001*. Brussels, 2021.

⁶⁶ SALOMÃO, Helder; CAROLINA, Áurea; MELCHIONNA, Fernanda. Projeto de Lei (PL) 572/2022 / Framework for Business and Human Rights. *Câmara dos Deputados*, 14 mar. 2022. Disponível em: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2317904&fichaAmigavel=nao>.

⁶⁷ BUENO, N.; BERNAZ, N.; HOLLY, G.; MARTIN-ORTEGA, O. The EU Directive on Corporate Sustainability Due Diligence (CSDDD): the final political compromise. *Business and Human Rights Journal*, v. 9, n. 2, p. 294-300, May 2024. Available at: <http://dx.doi.org/10.1017/bhj.2024.10>. Access on: 23 Oct. 2024.

⁶⁸ PRINCIPALE, S. *Fostering sustainability in corporate governance: analysis of the EU sustainable corporate governance and due diligence directives*. Cham: Springer Nature Switzerland, 2023.

gislations - Mexico's General Law of Corporate Responsibility and Corporate Due Diligence and Brazil's Framework for Business and Human Rights (PL 572/2022). Both of these legislative initiatives are currently at the proposal stage and have not been yet adopted. The Mexican General Law of Corporate Responsibility and Corporate Due Diligence aims to impose a large variety of sanctions, including public or private reprimands, penalty and fines, closure of business's premises, prohibitions of carrying out in the future activities, or even dissolution of the company. This legislative document envisions that violating business can be ordered to repair damages caused by the breaches and provide a compensation, thus mandating remediation mechanisms that fall into the restitution and compensation categories. On the other hand, Brazil's Framework for Business and Human Rights takes a notably strict approach to sanctions and remediation. While sanctions range from fines and loss of privileges from receiving contracts with public agencies all the way to the loss of assets and potential compulsory dissolution of the entity, the proposal calls for extra measures to be taken when determining what type of remediation is proportionate to the committed violation. The proposal removes any legal or conventional time limit for arbitration on claims for damage resulting from human rights violations, as well as mandates full compensation and reparations of damages to the affected individuals. Moreover, when determining the extent of compensation for damages, the legislation calls for prioritising and respecting the way of life, culture, practices, beliefs, social organisation and traditions of indigenous peoples, quilombolas, and traditional communities.

Also only two legislations, the UK Environmental Act 2021 and Belgium's Proposal on Duty of Vigilance use a combination of restitution and satisfaction as remediation mechanisms. The UK Environment Act 2021 offers remedies that fall into restitution and satisfaction categories in the form of a variety of orders and notices. As part of restitution remedies, regulators can issue enforcement notices, requiring the business to rectify the breach, as well as clean-up notices that obliges the business to clean up any contamination they have caused in order to return to the state prior to the violation. In terms of satisfaction remedies, the director can be prohibited to lead the business through a disqualification order, crime prevention orders lasting up to five years can be issued towards the convicted indi-

vidual, and assets equal to the financial benefit received from the criminal activity can be confiscated. As for the Belgian Proposal on Duty of Vigilance, the document places the duty to repair damages suffered by victims due to absent or insufficient precautions in business activities and operations.

The majority of the mapped legislations resort to using compensation and satisfaction as remediation. Much like the UK Environment Act 2021, the UK Modern Slavery Act⁶⁹, enforced since 2015, addressing the issues of modern-day slavery in the business operations of companies registered in the UK and their global supply chains, also takes a strict approach to legal violations. The Act uses compensation and satisfaction as remediation mechanisms with the introduction of slavery and trafficking reparation orders (Article 9), "requiring the person against whom it is made to pay compensation to the victim of a relevant offence for any harm resulting from that offence" and the slavery and trafficking prevention orders (Article 17), including prohibitions, applicable in and outside of the territory of the UK, that the court sees as "necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence". Meanwhile, the Dutch Bill on Responsible and Sustainable International Business Conduct (RSIBC bill)⁷⁰, originally proposed in 2021, covers a large variety of remedial actions falling into the compensation and satisfaction categories, including specific measures to prevent, mitigate or terminate the adverse impacts, compensation for the loss and damage suffered by affected persons, groups of persons and communities, rehabilitation of the victim and written apologies by a director or the company's board. Similarly at the proposal stage since 2022, the Spanish Law for the Protection of Human Rights, Sustainability and Due Diligence in Transnational Business Activities, modelled after the EU Directive on Corporate Sustainability Due Diligence (CSDDD), calls for a guaranteed access to justice, before the Spanish courts, for victims of corporate abuses, regardless of the place where the violation was committed. The proposal does

⁶⁹ UNITED KINGDOM. Parliament. *Modern Slavery Act 2015* (c.30). Norwich: The Stationery Office Limited, 2015.

⁷⁰ NETHERLANDS. House of Representatives. *Bill for Responsible and Sustainable International Business Conduct (Wetsvoorstel verantwoord en duurzaam internationaal ondernemen)*. The Hague, 2022.

not offer much detail on what kind of sanctions will be used to back up and strengthen the effectiveness of the remediation measures. Another proposal, the U.S. Slave-Free Business Certification Act of 2022⁷¹ calls for compensation and lists a wider range of remedial actions in the satisfaction category in the form of civil action, including a permanent or temporary injunction, restraining order, or any other order deemed appropriate. On the EU level, the Proposal on prohibiting products made with forced labour on the Union establishes a combination of compensation and satisfaction remedial action for violations by entities. While sanctioning methods and severity is left up to the Member States to decide based on their national laws, as part of the remedial action, products made with forced labour are to be banned from the EU market until the violating company has demonstrated that they no longer use forced labour in its production or supply chain and that they have appropriately compensated the workers for the harm done to them.

As for legislations that only use compensation as a singular remediation category, the matrix identifies the Canadian Fighting against Forced Labour and Child Labour in Supply Chains Act (Amendment of Customs Tariff)⁷² and the French Corporate Duty of Vigilance Law⁷³. The Canadian legislation calls for the remediation of the loss of income to the most vulnerable families resulting from measures taken by the business to eliminate the use of forced labour or child labour in activities and supply chains. The Act also incorporates criminal sanctions and fines up to approximately €229,300 as a sanctioning mechanism. Meanwhile, the French Corporate Duty of Vigilance Law, adopted in 2017, a pioneer legislation in human, labour and environmental rights protection, imposes a duty of vigilance on enterprises located on the French territory with at least five thousand employees within the company and its direct and indirect subsidiaries and on the enterprises located on the French territory or abroad with at least ten thousand employees in its service and in its direct or indirect subsidiaries. The Law mandates companies to draft, publish and implement a due diligence plan for

the purpose of risk identification and prevention of human rights violations and environmental abuses. The failure to follow the imposed obligations will result in the reception of formal notice to comply, and in case of further non-compliance, the action to establish liability can be filed before the relevant jurisdiction. In regards to the remediation mechanism, Article 2 of the Law refers to the French Civil Code and states that in case of non-compliance, companies shall be “liable and obliged to compensate for the harm that due diligence would have permitted to avoid”. In the event when the company has not published a due diligence plan and harm has been caused by its actions, financial compensation will be sought from the person convicted.

The German Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichten gesetz*)⁷⁴ and the U.S. Uyghur Forced Labor Prevention Act (Public Law No. 117-78) (UFLPA)⁷⁵ are the two enforced legislations identified in the matrix that use only satisfaction as remediation. The German Act requires enterprises to take appropriate remedial action without delay to prevent, end or minimize the extent of violation or in cases when it is impossible to bring an immediate end, to draw up a concept with a concrete timetable for ultimately ending and minimizing the violation. Similarly, the U.S. Act calls for remediation of any forced labour conditions, or if immediate remediation is not possible, then the enterprises are required to cut their relationship with the relevant supplier.

The analysis also includes two legislations that do invoke the duty to provide remediation but do not further specify what type of actions and reliefs are to be offered. These are the EU regulation on deforestation-free commodities and the Austrian Motion for a Resolution on a Supply Chain Act. Finally, the analysis also identifies legislations that are completely lacking remediation obligations, thus weakening its over power and effectiveness. These include the Mexican Forced Labour Regulation⁷⁶, the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains⁷⁷, the Austra-

⁷¹ UNITED STATES. Senate. S.3578 - 117th Congress (2021-2022): *Slave-Free Business Certification Act of 2022*. Washington, DC, 2022.

⁷² CANADA. Government. *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (S.C. 2023, c. 9). Ottawa, 2023.

⁷³ FRANCE. National Assembly. *LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*. Paris, 2017.

⁷⁴ GERMANY. Bundestag. *The Act on Corporate Due Diligence Obligations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten)*. Federal Law Gazette, Berlin, 2021. 1(46).

⁷⁵ UNITED STATES. Senate. H.R.1155 - 117th Congress (2021-2022) - *Uyghur Forced Labor Prevention Act*. Washington, DC, 2022.

⁷⁶ MEXICO. Secretariat of Labor and Social Welfare. *Forced Labor Regulation*. Mexico City, 2023.

⁷⁷ CHINNA. CCCMC. *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*. Beijing, 2015.

lian Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2022⁷⁸, the Australian Customs Amendment (Preventing Child Labour) Bill 2023⁷⁹, the Canadian Xinjiang Manufactured Goods Importation Prohibition Act⁸⁰, the Swiss Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO)⁸¹, the U.S. Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act⁸², the Dutch Child Labour Due Diligence Act⁸³ and the Brazilian MTPS/MMIRDH Interministerial Ordinance No. 4 OF 05/11/2016⁸⁴.

5 Discussion

Some scholars such as Leite⁸⁵ are skeptical about the ability of human rights due diligence based approaches to empower rights-holders and victims of corporate human rights abuses. This raises the question of how effective these measures will be in providing remedy to victims of human rights abuses. Most measures are of a recent nature to assess the impact in terms of changing corporate behavior, compliance with legal obligations, preventing unwanted outcomes and providing victims with proper compensation. Hence, the empirical evidence on their effectiveness is largely non-

-existing. Moreover, there are multiple factors that make it difficult to clearly measure and define if a specific legislative act has been effective⁸⁶. However, it is clear that the design of the different measures in relation to remedy provisions varies significantly as is shown in the above analysis. Hence it is possible to discuss the effectiveness of these measures from an institutional design perspective. Institutional design effectiveness refers to the degree to which rules within a regulatory measure facilitate the achievement of its objectives or goals. This approach towards effectiveness builds on the theoretical framework of 'institutional analysis and development' developed by Ostrom⁸⁷. It assumes that institutions, in order to produce impact, should have clear and enforceable rules on for example access to remedy. There are several studies which apply institutional design effectiveness analysis to a broad range of topics in the area of business and human rights and corporate social responsibility^{88, 89, 90}.

To discuss the institutional design effectiveness, we focus on the remediation provisions in the regulatory measures coupled with provisions on sanctioning provisions since only strong provisions on sanctioning can cease the human rights abuses from continuing in the future. It is clear that a strong, diverse remediation mechanism backed up with stringent, comprehensive sanctioning regime should increase the potential of due diligence legislation to play its role as an effective instrument for preventing and addressing human rights violations by companies. Studies have shown that to increase legal compliance, due diligence legislations should include a mix of civil, administrative, and criminal sanc-

⁷⁸ AUSTRALIA. Senate. *Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022*. Canberra, 2022. Available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1356.

⁷⁹ AUSTRALIA. Senate. *Customs Amendment (Preventing Child Labour) Bill 2023*. Canberra, 2023. Available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1403.

⁸⁰ CANADA. Senate. *An act to amend the customs tariff (goods from xinjiang) (xinjiang manufactured goods importation prohibition act)*. Ottawa, 2021.

⁸¹ SWISS. Federal Council. *Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO)*. Bern, 2021.

⁸² UNITED STATES. Senate. *S.3371 - 118th Congress (2023-2024): FOREST Act of 2023*. Washington, DC, 2023.

⁸³ INDIA COMMITTEE OF THE NETHERLANDS. *Child Labour Due Diligence Act (Wet zorgplicht kinderarbeid)*. 2019. Available at: <https://respect.international/child-labour-due-diligence-law-wet-zorgplicht-kinderarbeid/>.

⁸⁴ BRASIL. Ministério da Justiça. Portaria Interministerial nº 4 de 11, de maio de 2016. *Diário Oficial da União*: seção, Brasília, DF, n. 90, p. 70, 12 maio 2016.

⁸⁵ LEITE, M. Beyond buzzwords: mandatory human rights due diligence and a rights-based approach to business models. *Business and Human Rights Journal*, v. 8, n. 2, p. 197-212, 2023.

⁸⁶ MCCORQUODALE, R.; NOLAN, J. The effectiveness of human rights due diligence for preventing business human rights abuses. *Netherlands International Law Review*, v. 68, n. 3, p. 455-478, 2021.

⁸⁷ OSTROM, E. *Understanding institutional diversity*. Princeton: Princeton University Press, 2005.

⁸⁸ COLLINS, B.; EVANS, A.; HUNG, M.; KATZENSTEIN, S. *The New Regulators? Assessing the Landscape of Multi-Stakeholder Initiatives. Assessing the landscape of multi-stakeholder initiatives*. MSI Integrity and Kenan Institute for Ethics, Duke University, 2017.

⁸⁹ FIORINI, M.; HOEKMAN, B.; JANSEN, M.; SCHLEIFER, P.; SOLLEDER, O.; TAIMASOVA, R.; WOZNIAK, J. Institutional design of voluntary sustainability standards systems: evidence from a new database. *Development Policy Review*, v. 37, n. 2, p. 193-212, 2019.

⁹⁰ GARRETT, R. D.; LEVY, S.; CARLSON, K. M.; GARDNER, T. A.; GODAR, J.; CLAPP, J.; DAUVERGNE, P.; HEILMAYR, R.; LE POLAIN DE WAROUX, Y.; AYRE, B.; BARR, R.; DØVRE, B.; GIBBS, H. K.; HALL, S.; LAKE, S.; MILDRE, J. C.; RAUSCH, L. L.; RIVERO, R.; RUEDA, X.; SANSFIELD, R.; SOARES-FILHO, B.; VILLORIA, N. Criteria for effective zero-deforestation commitments. *Global Environmental Change*, v. 54, p. 135-147, 2019.

tions both for non-disclosure and non-compliance with the required obligations of human rights due diligence⁹¹. A legislative document that only creates obligations of reporting or transparency and does not include clauses of liability and enforcement is rarely effective as an instrument for changing business conduct. A strong enforcement framework plays a role both as a deterrent and an incentive of due diligence compliance for the businesses⁹². Recognising the moral harm suffered by the victim from the incurred violation can help address the insufficiency of provided relief and elevate it from bare monetary compensation to a more comprehensive remedial action. Inclusion of structural injunctions that aim to modify an organization's structure, processes, or rules may be a better way of combatting deep-rooted, persistent and repeat human rights violations⁹³.

The most comprehensive in terms of incorporating a larger variety of remediation measures are the Norwegian Transparency Act and the EU CSDDD. These two documents combine "restitution", "compensation" and "satisfaction" measures as an attempt to increase the effectiveness of remedies for the victims of human rights violations. The Norwegian legislation may be a notable step forward with its commitments to transparency, access to information, duty of directors/management and the adherence to internationally established standards for ethical business conduct, such as the UN-GPs and the OECD Guidelines, it still does not allow the victims to exercise their right to take companies to court. While the Norwegian Transparency Act does put the obligation on the company to provide a remedy for the actions that have impacted human and labour rights, due diligence requirements and good business practices, it lacks provisions on civil liability⁹⁴. Ultimately, the

lack of civil liability and the right to access the courts limits the State's capability of ensuring that victims receive court-mandated remediation for their damages. The situation is different when it comes to the EU CSDDD, as this directive puts forth the burden on states to ensure access to justice for the victims in order to exercise their right to an effective remedy. The conditions for bringing forward civil liability in courts is to be regulated by the national laws, however limitation periods for bringing civil liability claims for damages should not be hampered by national laws and is required to be "at least five years and, in any case, not lower than the limitation period laid down under general civil liability national regimes" (Point 58(d)). Additionally, the CSDDD also puts a monitoring obligation on the Member States who are required to ensure that in case the violating company fails to provide remediation, the relevant State supervisory authority issues an order addressed at the company to provide appropriate remediation. The legislative impact is further increased through the inclusion of rigorous and diverse sanctions for violating entities. The Directive establishes pecuniary penalties for non-compliance, maximum limit of which is to be not less than 5% of the net worldwide turnover of the company in the financial year preceding the fining decision. The sanctioning power also includes the "naming and shaming" policy through a publicly available statement for at least 5 years, however, in this case, this policy is to be ensured by Member States and not the Commission.

Compensation in combination with satisfaction remedies is the most frequently used remediation mechanism in current due diligence legislations. For a remedy to be effective, it should either be able to prevent the alleged violation or its continuation or provide redress when the violation that has already occurred. Simply imposing a fine on a business enterprise does not guarantee that the said enterprise will cease the human rights abuses. It also does not provide victims with effective remedy for violations they have endured. However, court mandated compensation as a form of reparation can serve the purpose of clearly establishing the wrongdoing of the company and also try to offset the sustained damages caused by the violations. On the other hand, there are multiple factors that challenge the effectiveness of remediation mechanism built on compensation, such as the enforcement of favourable decisions and the calculation of damages and respective monetary compensation in cross-border cases. There

⁹¹ AGUINAGA, S. G. Effectiveness of mandatory human rights and environmental due diligence. *Modern Slavery and Human Rights Policy*, 27 Mar. 2024. Available at: <https://www.modernslaverypec.org/resources/updated-mhredd> Access on: 31 July 2024.

⁹² MCCORQUODALE, R.; NOLAN, J. The effectiveness of human rights due diligence for preventing business human rights abuses. *Netherlands International Law Review*, v. 68, n. 3, p. 455-478, 2021.

⁹³ HALBERSTAM, D.; VAN DEN BOGAERT, S. A fresh look at judicial remedies in EU equality law and beyond: the untapped possibility of structural injunctions. *Common Market Law Review*, v. 60, n. 5, p. 1269-1312, 2023.

⁹⁴ NORWEGIAN parliament adopts the Transparency Act. *European Coalition for Corporate Justice*, Brussels, 14 June 2021. Available at: <https://corporatejustice.org/news/norway-adopts-transparency-act/#:~:text=Under%20this%20law%2C%20citizens%20will,to%20seek%20remedy%20in%20court>. Access on: 31 July 2024.

can also be difficulties in enforcing the liable company to pay the compensation to the victim. Additionally, there is criticism that people whose human rights have been violated expect more from justice than mere financial compensation, especially considering the amount of judicial barriers, time and pressure associated with claiming damages⁹⁵. These factors should be considered especially when looking at the potential effectiveness of due diligence legislations that singularly have compensation as a remediation mechanism.

This is the case for another pioneer law among the due diligence legislations, the French Vigilance Law, which compared to the Norwegian Transparency Act, has a larger, more profound capacity to force companies to include due diligence provisions in their business models and practices. The Law serves as a legitimate judicial mechanism for the affected individuals and communities, trade unions and civil society organisations to fight for their rights and demand remedies for the suffered damages⁹⁶. However, when it comes to the strength of the remediation mechanism, it only envisions a remedy in the form of a compensation. There is not much flexibility for the victims to receive a remedy from the other two remediation categories. Even more severe barrier to the enforcement of the Law is the fact that the legislation places the burden of proof on the victim, i.e. the company will only be held liable for damages if the victim provides sufficient proof that a company breached its obligations⁹⁷. Since the Law went into force in 2017, all claims submitted to the courts under the French Duty of Vigilance Law had been dismissed on procedural grounds, but recently, on 5 December 2023⁹⁸, the first decision on the merits was rendered by the Judicial Court of Paris against the French state-owned postal company. However, in this specific case, the court decision consisted of an order

to amend and supplement the company's vigilance plan and it did not provide for a timeframe of compliance or a penalty payment⁹⁹. Moreover, with the burden of proof on the victim to receive compensation, companies and plaintiffs are encouraged by the judges to utilise alternative dispute resolution mechanisms such as mediation¹⁰⁰. The weaknesses of the legislation in terms of remediation are also not counterweighed by a clear, comprehensive sanctioning mechanism. There is less clarity on the limits of sanctions, as the initially envisioned possibility to impose civil fines up to 30 million Euro was censored by the French Constitutional Council due to the imprecision of the legal terms used to create obligations. To this day, compensation as a remediation mechanism provided by the Law has not been activated, thus making it questionable whether victims can successfully receive an effective remedy through this legislation and if this legislative initiative can push companies towards fulfilling due diligence obligations.

When it comes to legislations that include satisfaction as a singular avenue for remediation, as in providing remedial actions in the form of apologies, promises to not do it again, cancelation of contracts etc., the legislative impact of these documents depends on the effectiveness of other due diligence enforcement measures included by the legislators. While a public apology to the victim acknowledging the wrongdoings and accepting the responsibility from the company's side can bring validation to the victims and help restore the emotional damage that cannot be compensated by money, these types of remedies do not guarantee that the business will actually change its operating procedures after the apology. It should also be noted that companies often hesitate to apologise publicly for fear of reputational damage, negative publicity, as well as for the concerns that doing so may be used by the victim to pursue legal claims¹⁰¹. Therefore, it is crucial for legislations that

⁹⁵ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. *Business and human rights: access to remedy*. Luxembourg: Publications Office of the European Union, 2020.

⁹⁶ BOMMIER, S.; CHATELAIN, L.; LOYER, C. (ed.). *Duty of vigilance radar: follow up on current cases*. [S. l.]: CCFD-Terre Solidaire and Sherpa, 2021. Available at: <https://vigilance-plan.org/wp-content/uploads/2021/07/A4-VF-FICHES-UK-060721-xxs.pdf>. Access on: 31 July 2024.

⁹⁷ SCHILLING-VACAFLOR, A. Putting the french duty of vigilance law in context: towards corporate accountability for human rights violations in the global south? *Human Rights Review*, v. 22, n. 1, p. 109-127, 2021.

⁹⁸ PARIS. Tribunal Court. *Jugement rendu le 05 Décembre 2023*. Available at: http://www.sudptt.org/IMG/pdf/sudptt_laposte_jugement_ddv_5_dec_2023.pdf. Access on: 31 July 2024.

⁹⁹ CAVICCIOLI, C.; HANNEZO, E.; JAIS, J. C. French duty of vigilance law: first decision on the merits rendered by a french court. *Linklaters*, London, 6 Dec. 2023. Available at: <https://sustainablefutures.linklaters.com/post/102iuhu/french-duty-of-vigilance-law-first-decision-on-the-merits-rendered-by-a-french-c>. Access on: 31 July 2024.

¹⁰⁰ SCEMLA, S. The french duty of vigilance law: a new litigation risk for european companies. *International Bar Association*, London, 1 Dec. 2023. Available at: <https://www.ibanet.org/The-French-Duty-of-Vigilance-Law-a-New-Litigation-Risk>. Access on: 31 July 2024.

¹⁰¹ CHICHESTER, O.; RIQUELME, M. Access to Remedy. *Business for Social Responsibility*, San Francisco, 2021. Available at: <https://www.bsr.org/reports/bsr-access-to-remedy.pdf>. Access on: 31 July

do not further mandate other stronger forms of remediation, like the U.S. Uyghur Forced Labor Prevention Act and the German Act on Corporate Due Diligence Obligations in Supply Chains, to at least have extensive and stringent sanctioning mechanisms to “punish” non-compliant companies and motivate them to incorporate due diligence measures set out in the legislation in their business operations. This is surely reflected in the U.S. Act where the sanctions are wide-ranging and rigorous. The Act pushes companies to ensure through due diligence measures that their merchandise was not mined, produced, or manufactured wholly or in part by forced labour, because otherwise they can face sanctions starting from asset blocking, visa ineligibility and revocation, and detention of merchandise, all the way to civil penalties up to €230,125 or not more than twice the amount of the violating transaction and criminal penalties with fines not more than €920,500 and/or imprisonment for up to 20 years. Likewise, the sanctioning mechanism in the German Act compensates for the relatively limited remediation mechanism, introducing periodic penalty payments of up to €50,000 and exclusion from public contracts up to 3 years, and most importantly, in case of enterprises with an annual turnover of more than €400 million, administrative fines up to €8 million or up to 2% of annual global turnover imposed on any legal persons and associations of persons.

Mere existence of policies and directives aimed at protecting human rights does not guarantee that a corporation will then provide redress for the committed violation. For this, a grievance mechanism that provides an avenue to the victim to seek and receive remediation is necessary¹⁰². The extent to which remediation is incorporated in the law is a determinant of its effectiveness. A wide range of remedies allows for the victim to receive the most appropriate remedy depending on the circumstance, including the type of violation, damage obtained, time constraints and the personal preferences of the victim. Having multiple types of remedies concurrently available to the affected persons and communities makes it more likely for the remediation mechanism to be effective in recouping the damage¹⁰³.

However, while the legislation may include a combination of more than one category of remediation in a form of “restitution”, “compensation” and “satisfaction”, there is still the factor of accessing and obtaining the remedy itself. Without strong justice provisions like civil liability and the reversal of the burden of proof on the company, the power asymmetries between business and rights holders are a significant obstacle for victims in establishing legal liability of multinational companies in courts and receiving a court mandated remedy¹⁰⁴. It is also important to embed provided remedies through an ethical framework, not only to morally right the committed violation, but to also not overshadow victim’s claims by complicated or vague corporate mechanisms that further hinder their access to justice¹⁰⁵. Furthermore, it should also be noted that the perception on whether or not a remedy was effective can change based on the victim’s expectations. The above-listed barriers, as well as the social, economic and cultural conditions can create low expectations for the rights holders, while on the other hand, it is also possible to hold unreasonably high expectations of remedies¹⁰⁶.

6 Conclusion

The article focused on 26 currently adopted or proposed legislations that introduce legal obligations of due diligence compliance on companies. An analysis was performed in order to assess which type of remediation mechanism(s), “restitution”, “compensation”, “satisfaction” were used by the legislators, and whether they were used singularly or in combination. Additionally, the paper identified the lack of remediation measures in a number of legislations. The categorisation of remedies and an observation on if and how they were

for business-related human rights abuses’. UN Working Group on the issue of human rights and transnational corporations and other business enterprises. Geneva, 2017.

¹⁰⁴ AGUINAGA, S. G. Effectiveness of mandatory human rights and environmental due diligence. *Modern Slavery and Human Rights Policy*, 27 Mar. 2024. Available at: <https://www.modernslaverypec.org/resources/updated-mhredd> Access on: 31 July 2024.

¹⁰⁵ JOS, J. Access to remedies and emerging ethical dilemmas: changing contours within the business - human rights debate. *Revista de Direito Internacional*, v. 15, n. 2, p. 115-128, 2018.

¹⁰⁶ OHCHR. *A/72/162*: report on access to effective remedy for business-related human rights abuses’. UN Working Group on the issue of human rights and transnational corporations and other business enterprises. Geneva, 2017.

2024.

¹⁰² TÜRKE, Mariana Aparecida Vilamondes. Business and Human Rights in Brazil: exploring human rights due diligence and operational-level grievance mechanisms in the case of Kinross Paracatu gold mine. *Revista de Direito Internacional*, v. 15, n. 2, p. 221-241, 2018.

¹⁰³ OHCHR. *A/72/162*: report on access to effective remedy

supported with sanctions provides an initial analysis on the effectiveness of these initiatives to bring remediation to the victims of human rights violations.

The article finds that there is a tendency in current due diligence legislations to include encompassing remediation mechanisms. The regulatory power and impact of the legislation is further enhanced via diverse sanctioning mechanisms, including civil and criminal liability, administrative fines and “naming and shaming” approaches. However, there might still be significant challenges that undermine the effectiveness of remediation mechanisms, especially in relation to access to justice. The power imbalance between the victims and the offenders, difficulties in accessing the courts, lack of information and evidence, the burden of proof on the victim, perceptions and expectations of the rights holders etc. are among those barriers that can potentially impact the effectiveness and the impact of the legislation on safeguarding human, labour and environmental rights. Future research should analyze the degree to which due diligence measures tackle these challenges.

Finally, as this transition of due diligence obligations from “soft law” measures to “hard law” obligations is relatively recent, there has not been much evidence or time to observe how successfully these new legislative documents work in reality – whether they can incentivise compliance with the legal obligations, if they can promote change in corporate behaviour, and if they can effectively prevent unwanted outcomes or provide victims with effective remedies. Nevertheless, actively working on removing the barriers that victims face when seeking remediation can only contribute to the effectiveness of due diligence legislations.

References

- ADDO, K. The correlation between labour standards and international trade: which way forward. *Journal of World Trade*, v. 36, n. 2, p. 285-303, 2002.
- AGUINAGA, S. G. Effectiveness of mandatory human rights and environmental due diligence. *Modern Slavery and Human Rights Policy*, 27 Mar. 2024. Available at: <https://www.modernslaverypec.org/resources/updated-mhreidd> Access on: 31 July 2024.
- AUSTRALIA. Senate. *Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022*. Canberra, 2022. Available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1356.
- AUSTRALIA. Senate. *Customs Amendment (Preventing Child Labour) Bill 2023*. Canberra, 2023. Available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1403.
- BAADE, B. Due diligence and the duty to protect human rights. In: KRIEGER, H.; PETERS, A.; KREUZER, L. *Due diligence in the international legal order*. Oxford: Oxford University Press, 2020. p. 92-108.
- BALATON-CHRMES, S.; HAINES, F. Redress and corporate human rights harms: an analysis of new governance and the POSCO Odisha Project. *Globalizations*, v. 14, n. 4, p. 596-610. 2017.
- BELGIUM. Chamber of Representatives. *Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur/Wetsvoorstel houdende de instelling van een zorg- en verantwoordingsplicht voor de ondernemingen, over hun hele waardeketen* n° 55-1903/001. Brussels, 2021.
- BOMMIER, S.; CHATELAIN, L.; LOYER, C. (ed.). *Duty of vigilance radar: follow up on current cases*. [S. l.]: CCFD-Terre Solidaire and Sherpa, 2021. Available at: <https://vigilance-plan.org/wp-content/uploads/2021/07/A4-VF-FICHES-UK-060721-xxs.pdf>. Access on: 31 July 2024.
- BRASIL. Ministério da Justiça. Portaria Interministerial n° 4 de 11, de maio de 2016. *Diário Oficial da União*: seção, Brasília, DF, n. 90, p. 70, 12 maio 2016.
- BRIGHT, C.; MARX, A.; PINEAU, N.; WOUTERS, J. Toward a corporate duty for lead companies to respect human rights in their global value chains? *Business and Politics*, v. 22, n. 4, p. 667-697, 2020.
- BUENO, N.; BERNAZ, N.; HOLLY, G.; MARTIN-ORTEGA, O. The EU Directive on Corporate Sustainability Due Diligence (CSDDD): the final political compromise. *Business and Human Rights Journal*, v. 9, n. 2, p. 294-300, May 2024. Available at: <http://dx.doi.org/10.1017/bhj.2024.10>. Access on: 23 Oct. 2024.
- BUHMANN, K. Confronting challenges to substantive remedy for victims: opportunities for OECD National

contact points under a due diligence regime involving civil liability. *Business and Human Rights Journal*, v. 8, n. 3, p. 403-426, 2023.

BUYSE, A. Lost and regained? Restitution as a remedy for human rights violations in the context of international law. *Heidelberg Journal of International Law (Zeitschrift für ausländisches öffentliches Recht und Völkerrecht)*, v. 68, n. 2008, p. 129-153, 2008.

CANADA. Government. *Fighting Against Forced Labour and Child Labour in Supply Chains Act (S.C. 2023, c. 9)*. Ottawa, 2023.

CANADA. Senate. *An act to amend the customs tariff (goods from xinjiang) (xinjiang manufactured goods importation prohibition act)*. Ottawa, 2021.

CAVADINO, M.; DIGNAN, J. Reparation, retribution and rights. *International Review of Victimology*, v. 4, n. 4, p. 233-253, 1997.

CAVICCIOLI, C.; HANNEZO, E.; JAIS, J. C. French duty of vigilance law: first decision on the merits rendered by a french court. *Linklaters*, London, 6 Dec. 2023. Available at: <https://sustainablefutures.linklaters.com/post/102iuhu/french-duty-of-vigilance-law-first-decision-on-the-merits-rendered-by-a-french-c>. Access on: 31 July 2024.

CHINNA. CCCMC. *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*. Beijing, 2015.

CHICHESTER, O.; RIQUELME, M. Access to Remedy. *Business for Social Responsibility*, San Francisco, 2021. Available at: <https://www.bsr.org/reports/bsr-access-to-remedy.pdf>. Access on: 31 July 2024.

COLLINS, B.; EVANS, A.; HUNG, M.; KATZENSTEIN, S. *The New Regulators? Assessing the Landscape of Multi-Stakeholder Initiatives. Assessing the landscape of multi-stakeholder initiatives*. MSI Integrity and Kenan Institute for Ethics, Duke University, 2017.

DALLAS, M. P.; PONTE, S.; STURGEON, T. J. Power in global value chains. *Review of International Political Economy*, v. 26, n. 4, p. 666-694, 2019.

DEHM, J. Beyond climate due diligence: fossil fuels, 'red lines' and reparations. *Business and Human Rights*, v. 8, n. 2, p. 151-179, 2023.

DEVA, S. Mandatory human rights due diligence laws in Europe: a mirage for rightsholders. *Leiden Journal of International Law*, v. 36, n. 2, p. 389-414, 2023.

DEVA, S. Business and human rights: alternative approaches to transnational regulation. *Annual Review of Law and Social Science*, v. 17, p. 139-158, 2021.

DUVAL, A. Ruggie's double movement: assembling the private and the public through human rights due diligence. *Nordic Journal of Human Rights*, v. 41, n. 3, p. 279-303, 2023.

ENNEKING, L. F. H. Judicial remedies: the issue of applicable law. In: RUBIO, J. J. Á.; YIANNIBAS, K. (ed.). *Human rights in business: removal of barriers to access to justice in the european union*. London: Routledge, 2017. p. 39-77.

ENNEKING, L.; GIESEN, I.; SHAAP, A-J.; RYNGAERT, C.; KRISTEN, F.; ROORDA, L. *Accountability, international business operations and the law: providing justice for corporate human rights violations in global value chains*. London: Routledge, 2020.

EUROPEAN COMMISSION. Directorate-General for Justice and Consumers. Study on due diligence requirements through the supply chain: final report. *European Union*, Brussels, 2020. Available at: <https://data.europa.eu/doi/10.2838/39830>. Access on: 31 July 2024.

EUROPEAN COMMISSION. *Proposal for a Directive of the European Parliament and of The Council on corporate sustainability due diligence and amending directive (EU) 2019/1937, COM/2022/71 final*. Brussels, 15 Mar. 2024.

EUROPEAN COMMISSION; COUNCIL OF THE EUROPEAN UNION. *Regulation (EU) 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010*. Brussels, 23 May 2023.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS. *Business and human rights: access to remedy*. Luxembourg: Publications Office of the European Union, 2020.

FIORINI, M.; HOEKMAN, B.; JANSEN, M.; SCHLEIFER, P.; SOLLEDER, O.; TAIMASOVA, R.; WOZNIAK, J. Institutional design of voluntary sustainability standards systems: evidence from a new database. *Development Policy Review*, v. 37, n. 2, p. 193-212, 2019.

FRANCE. National Assembly. *LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*. Paris, 2017.

- GARRETT, R. D.; LEVY, S.; CARLSON, K. M.; GARDNER, T. A.; GODAR, J.; CLAPP, J.; DAUVERGNE, P.; HEILMAYR, R.; LE POLAIN DE WAROUX, Y.; AYRE, B.; BARR, R.; DØVRE, B.; GIBBS, H. K.; HALL, S.; LAKE, S.; MILDER, J. C.; RAUSCH, L. L.; RIVERO, R.; RUEDA, X.; SARFIELD, R.; SOARES-FILHO, B.; VILLORIA, N. Criteria for effective zero-deforestation commitments. *Global Environmental Change*, v. 54, p. 135-147, 2019.
- GEREFFI, G.; HUMPHREY, J.; STURGEON, T. The governance of global value chains. *Review of International Political Economy*, v. 12, n. 1, p. 78-104, 2005.
- GERMANY. Bundestag. The Act on Corporate Due Diligence Obligations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten). *Federal Law Gazette*, Berlin, iss. 1, n. 46, 2021.
- GRABS, J.; FATIMAH, Z. *2023 database of disclosure, due diligence, and trade-based supply chain legislation of potential*. Barcelona: Universitat Ramon Llull; ESADE Business School, 2023.
- HALBERSTAM, D.; VAN DEN BOGAERT, S. A fresh look at judicial remedies in EU equality law and beyond: the untapped possibility of structural injunctions. *Common Market Law Review*, v. 60, n. 5, p. 1269-1312, 2023.
- HARRISON, J. Human rights due diligence: challenges of method, power and competition. *CHRIIP Working Paper series*, n. 2, Coventry, 2023.
- HOW do NCPs handle cases? OECD, [2024]. Available at: <https://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>. Access on: 18 May 2024.
- INDIA COMMITTEE OF THE NETHERLANDS. *Child Labour Due Diligence Act (Wet zorgplicht kinderarbeid)*. 2019. Available at: <https://respect.international/child-labour-due-diligence-law-wet-zorgplicht-kinderarbeid/>.
- INTERNATIONAL LAW COMMISSION. *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10), chp.IV.E.1*. New York, 2001. Available at: <https://www.refworld.org/legal/otherinstr/ilc/2001/en/20951>. Access on: 31 July 2024.
- JOS, J. Access to remedies and emerging ethical dilemmas: changing contours within the business - human rights debate. *Revista de Direito Internacional*, v. 15, n. 2, p. 115-128, 2018.
- KHOURY, S.; WHYTE, D. *Corporate human rights violations: global prospects for legal action*. London: Routledge, 2017.
- KOWALSKI, P.; LOPEZ GONZALEZ, J.; RAGOUSISI, A.; UGARTE, C. *Participation of developing countries in global value chains: implications for trade and trade-related policies*. Paris: OECD Publishing, 2015. (OECD Trade Policy Papers, n. 179).
- KRAJEWSKI, M. Mandatory human rights due diligence laws: blurring the lines between state duty to protect and corporate responsibility to respect? *Nordic Journal of Human Rights*, v. 41, n. 3, p. 265-278, 2023.
- LANDAU, I. *Human rights due diligence and labour governance*. Oxford: Oxford University Press, 2023.
- LANDAU, I. Human rights due diligence and the risk of cosmetic compliance. *Melbourne Journal of International Law*, v. 20, n. 1, p. 1-27, 2019.
- LEITE, M. Beyond buzzwords: mandatory human rights due diligence and a rights-based approach to business models. *Business and Human Rights Journal*, v. 8, n. 2, p. 197-212, 2023.
- LENNARTZ, B. Business actors' interest in harder and softer regulation of human rights due diligence. *Nordic Journal of Human Rights*, v. 41, n. 3, p. 326-344, 2023.
- MACCHI, C.; BRIGHT, C. Hardening soft law: the implementation of human rights due diligence requirements in domestic legislation. In: BUSCEMI, M.; LAZZERINI, N.; MAGI, L. (ed.). *Legal sources in business and human rights: evolving dynamics in international and european law*. Leiden: Brill Nijhoff, 2020. p. 218-247.
- MARX, A.; BRIGHT, C.; PINEAU, N.; WOUTERS, J. Corporate accountability mechanisms in EU member states for human rights abuses in third countries. In: CZECH, P.; HESCHL, K.; LUKAS, K.; NOWAK, M.; OBERLEITNER, G. (ed.). *European Yearbook on Human Rights*. [S. l.]: Intersentia, 2019. p. 157-186.
- MCCORQUODALE, R. The litigation landscape of business and human rights. In: MEERAN, R.; MEEHAN, J. (ed.). *Human Rights litigation against multinationals in practice*. Oxford: Oxford University Press, 2021. p. 1-23.
- MCCORQUODALE, R.; NOLAN, J. The effectiveness of human rights due diligence for preventing business human rights abuses. *Netherlands International Law Review*, v. 68, n. 3, p. 455-478, 2021.

- MCGRATH, S. Fulfilling the forgotten pillar: ensuring access to remedy for business and human rights abuses. *Institute for Human Rights and Business*, Eastbourne, 15 Dec. 2015. Available at: <https://www.ihrb.org/latest/fulfilling-the-forgotten-pillar-ensuring-access-to-remedy-for-business-and>. Access on: 21 July 2024.
- MEERAN, R.; MEERAN, J. *Human Rights litigation against multinationals in practice*. Oxford: Oxford University Press, 2021.
- MENDE, J. Corporate human rights responsibilities: rethinking the public-private divide. *Nordic Journal of Human Rights*, v. 41, n. 3, p. 255-264, 2023.
- MEXICO. Secretariat of Labor and Social Welfare. *Forced Labor Regulation*. Mexico City, 2023.
- MEXICO. Senate. *Proposal for the General Law of Corporate Responsibility and Corporate Due Diligence*. Mexico City, 2020.
- NETHERLANDS. House of Representatives. *Bill for Responsible and Sustainable International Business Conduct (Wetsvoorstel verantwoord en duurzaam internationaal ondernemen)*. The Hague, 2022.
- NOLAN, J. Chasing the next shiny thing: can human rights due diligence effectively address labour exploitation in global fashion supply chains? *International Journal for Crime, Justice and Social Democracy*, v. 11, n. 2, p. 1-14, 2022.
- NOLAN, J. Hardening soft law: are the emerging corporate social disclosure and due diligence laws capable of generating substantive compliance with human rights norms? *Revista de Direito Internacional*, v. 15, n. 2, p. 64-83, 2018.
- NOLAN, J.; BOTT, G. Global supply chains and human rights: spotlight on forced labour and modern slavery practices. *Australian Journal of Human Rights*, v. 24, n. 1, p. 44-69, 2018.
- NORWAY. Parliament. *Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act)*. Oslo, 2021.
- NORWEGIAN parliament adopts the Transparency Act. *European Coalition for Corporate Justice*, Brussels, 14 June 2021. Available at: <https://corporatejustice.org/news/norway-adopts-transparency-act/#:~:text=Under%20this%20law%2C%20citizens%20will,to%20seek%20remedy%20in%20court>. Access on: 31 July 2024.
- O'BRIEN, C. Business and human rights and regional systems of human rights protection. In: MARX, A.; VAN CALSTER, G.; WOUTERS, J. (ed.). *Research handbook on global governance, business and human rights*. Cheltenham: Edward Elgar Publishing, 2022. p. 45-74.
- OECD. *OECD due diligence guidance for responsible business conduct*. [Paris]: OECD, 2018.
- OECD. *OECD guidelines for multinational enterprises on responsible business conduct*. Paris: OECD Publishing, 2023.
- OHCHR. *A/72/162: report on access to effective remedy for business-related human rights abuses*. UN Working Group on the issue of human rights and transnational corporations and other business enterprises. Geneva, 2017.
- OLSEN, Tricia D. Varieties of remedy: how contestation shapes governance. In: OLSEN, Tricia D. *Seeking justice: access to remedy for corporate human rights abuse*. Cambridge: Cambridge University Press, 2023. p. 25-46.
- OSTROM, E. *Understanding institutional diversity*. Princeton: Princeton University Press, 2005.
- OTTEBURN, K. Reaching the limit: access to remedy through nonjudicial mechanisms for victims of business-related human rights abuses. *International Journal of Human Rights*, v. 28, n. 2, p. 220-244, 2024.
- OTTEBURN, K.; MARX, A. Seeking remedy for corporate human rights abuses: what is the contribution of the OECD national contact points? In: MARX, A.; VAN CALSTER, G.; WOUTERS, J. (ed.) *Research handbook on global governance, business and human rights*. Cheltenham: Edward Elgar Publishing, 2022. p. 229-253.
- PARIS. Tribunal Court. *Jugement rendu le 05 Décembre 2023*. Available at: http://www.sudptt.org/IMG/pdf/sudptt_laposte_jugement_ddv_5_dec_2023.pdf. Access on: 31 July 2024.
- PRINCIPALE, S. *Fostering sustainability in corporate governance: analysis of the EU sustainable corporate governance and due diligence directives*. Cham: Springer Nature Switzerland, 2023.
- QUJIANO, G.; LOPEZ, C. Rise of Mandatory human rights due diligence: a beacon of hope or a double-edged sword?. *Business and Human Rights*, v. 6, n. 2, p. 241-256, 2021.
- SALOMÃO, Helder; CAROLINA, Áurea; MELCHIONNA, Fernanda. Projeto de Lei (PL) 572/2022 /

Framework for Business and Human Rights. *Câmara dos Deputados*, 14 mar. 2022. Disponível em: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2317904&fichaAmigavel=nao>. Access on: 31 July 2024.

SCEMLA, S. The french duty of vigilance law: a new litigation risk for european companies. *International Bar Association*, London, 1 Dec. 2023. Available at: <https://www.ibanet.org/The-French-Duty-of-Vigilance-Law-a-New-Litigation-Risk>. Access on: 31 July 2024.

SCHILLING-VACAFLOR, A. Putting the french duty of vigilance law in context: towards corporate accountability for human rights violations in the global south? *Human Rights Review*, v. 22, n. 1, p. 109-127, 2021.

SCHILLING-VACAFLOR, A.; LENSCHOW, A. Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges. *Regulation and Governance*, v. 17, n. 3, p. 677-693, 2023.

SCHORMAIR, M. J. L.; GERLACH, L. M. Corporate remediation of human rights violations: a restorative justice framework. *Journal of Business Ethics*, v. 167, n. 3, p. 475-493, 2020.

SMIT, L.; BRIGHT, C.; NEELY, S. Muddying the waters: the concept of a 'safe harbour' in understanding human rights due diligence. *Business and Human Rights*, v. 8, n. 1, p. 1-17, 2023.

SPAIN. Ministry of Social Rights, Consumer Affairs. *Prior public consultation of the Draft Law on the Protection of Human Rights, Sustainability and Due Diligence in Transnational Business Activities* (*Anteproyecto de Ley de protección de los derechos humanos, de la sostenibilidad y diligencia debida en las actividades empresariales transnacionales*). Madrid, 2022.

SWISS. Federal Council. *Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO)*. Bern, 2021.

TÜRKE, Mariana Aparecida Vilamondes. Business and Human Rights in Brazil: exploring human rights due diligence and operational-level grievance mechanisms in the case of Kinross Paracatu gold mine. *Revista de Direito Internacional*, v. 15, n. 2, p. 221-241, 2018.

UNITED KINGDOM. Office of the High Commissioner for Human Rights. *Guiding Principles on Business and Human Rights: Implementing the United Nations*

"Protect, Respect and Remedy" Framework. New York; Geneva: UN, 2011.

UNITED KINGDOM. Parliament. *Environment Act 2021* (c. 30). Norwich: The Stationery Office Limited, 2021.

UNITED KINGDOM. Parliament. *Modern Slavery Act 2015* (c.30). Norwich: The Stationery Office Limited, 2015.

UNITED STATES. Senate. *H.R.1155 - 117th Congress (2021-2022) - Uyghur Forced Labor Prevention Act*. Washington, DC, 2022.

UNITED STATES. Senate. *S.3371 - 118th Congress (2023-2024): FOREST Act of 2023*. Washington, DC, 2023.

UNITED STATES. Senate. *S.3578 - 117th Congress (2021-2022): Slave-Free Business Certification Act of 2022*. Washington, DC, 2022.

VAN HUIJSTEE, M.; WILDE-RAMSING, J. Remedy is the reason: non-judicial grievance mechanisms and access to remedy. In: DEVA, S.; BIRCHALL, D. (ed.) *Research handbook on human rights and business*. Cheltenham: Edward Elgar Publishing, 2020. p. 471-491

WETTSTEIN, F. *Business and human rights: ethical, legal and managerial perspectives*. Cambridge: Cambridge University Press, 2022.

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